UNITED STATES PATENT AND TRADEMARK OFFICE

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10/761,088	01/20/2004	Chuck A. Black	200316365-1	1425

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EXAMINER
GILLIS, BRIAN J

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Please find below and/or attached an Office communication concerning this application or proceeding.

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte CHUCK A. BLACK

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Appeal 2009-007313
Application 10/761,088[1]
Technology Center 2400

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Before HOWARD B. BLANKENSHIP, JEAN R. HOMERE, and
JAMES R. HUGHES, *Administrative Patent Judges.*

HOMERE, *Administrative Patent Judge.*

DECISION ON APPEAL[2]

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[1] Filed on January 20, 2004. The real party in interest is Hewlett-Packard
Development Co., L.P. (App. Br. 3.)
[2] The two-month time period for filing an appeal or commencing a civil
action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing,
as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE"
(paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery
mode) shown on the PTOL-90A cover letter attached to this decision.

I. STATEMENT OF THE CASE

Appellant appeals under 35 U.S.C. § 134(a) (2002) from the Examiner's final rejection of claims 1 through 39. (App. Br. 3; Reply Br. 2.) We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We affirm.

Appellant's Invention

Appellant invented a method, apparatus, and computer readable medium for monitoring and determining the health of a network or a network device. (Spec. 3, l. 30-*id.* at 4, l. 11; *id.* at 10, ll. 1-3.)

Illustrative Claim

Independent claim 1 further illustrates the invention as follows:

1. A network management station, comprising:

    a processor;

    a memory coupled to the processor; and

    program instructions provided to the memory and executable by the processor to:

        transmit a network management message to a device connected to the network management station over a network;

        collect response information from the device based on the network management message;

        receive unsolicited information from the device; and

        analyze the response information and the unsolicited information, which include information

regarding device memory utilization, buffer utilization,
local area network (LAN) utilization, and cyclical
redundancy checking (CRC), according to a set of
heuristics to provide a health measurement of the device.

Prior Art Relied Upon

The Examiner relies on the following prior art as evidence of
unpatentability:

Manghirmalani	5,819,028	Oct. 6, 1998
Buia	2004/0078683 A1	Apr. 22, 2004
		(PCT May 7, 2001)
Shevenell	2004/0122645 A1	Jun. 24, 2004
		(filed Dec. 19, 2002)
Rayes	2005/0086502 A1	Apr. 21, 2005
		(filed Oct. 16, 2003)
Baekelmans	7,080,141 B1	Jul. 18, 2006
		(filed Apr. 12, 2002)

Rejections on Appeal

The Examiner rejects the claims on appeal as follows:

Claims 1 through 6, 8 through 16, 18, 19, and 21 through 37 stand
rejected under 35 U.S.C. § 103(a) as being unpatentable over the
combination of Manghirmalani, Buia, and Baekelmans.

Claims 7, 17, 38, and 39 stand rejected under 35 U.S.C. § 103(a) as
being unpatentable over the combination of Manghirmalani, Buia,
Baekelmans, and Rayes.

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being
unpatentable over the combination of Manghirmalani, Buia, Baekelmans,
and Shevenell.

Appellant's Contentions

Appellant contends that Buia's disclosure of a network management station receiving unsolicited information does not teach applying heuristics to the information from unsolicited transmissions to determine the health of a device. (App. Br. 25-26.) According to Appellant, Buia only discloses a network management station that merely receives unsolicited information. (*Id.* at 26.) Appellant also argues that since the Examiner conceded in the Final Rejection that Manghirmalani fails to teach "receiving unsolicited information from the device," Manghirmalani cannot teach or suggest "analyz[ing] the response information and the unsolicited information," as recited in independent claim 1. (Reply Br. 6.) Therefore, Appellant alleges that the proffered combination does not teach "analyz[ing] … the unsolicited information … according to a set of heuristics to provide a health measurement of the device," as recited in independent claim 1. (App. Br. 25-28; Reply Br. 4-9.)

Examiner's Findings and Conclusions

The Examiner finds that Manghirmalani's disclosure of analyzing various types of network data (i.e., network utilization and error information) utilizing a set of heuristics or pre-defined formulas in order to compute a health score, in conjunction with Buia's disclosure of a management station receiving unsolicited information, teaches the disputed limitation. (Ans. 22-23.)

II. ISSUE

Has Appellant shown that the Examiner erred in concluding that the combination of Manghirmalani, Buia, and Baekelmans renders independent

claim 1 unpatentable? In particular, the issue turns on whether the proffered
combination teaches "analyz[ing] … the unsolicited information …
according to a set of heuristics to provide a health measurement of the
device," as recited in independent claim 1.

III. FINDINGS OF FACT

The following Findings of Fact ("FF") are shown by a preponderance
of the evidence.

Manghirmalani

1.   Manghirmalani discloses a network management station on a
computer network that provides a user with an indication of a computer's
network health. (Abst.)

2.   Manghirmalani discloses that "[t]he 'health' of a network is an
overall numerical representation of how well the network is functioning."
(Col. 6, ll. 18-19.) In particular, Manghirmalani discloses computing the
health of a network based on inputted network specific data. (*Id.* at ll. 19-
21.) Manghirmalani discloses applying the inputted data to a set of pre-
defined formulas, thereby resulting in a health "score." (*Id.* at ll. 32-33.)

Buia

3.   Buia discloses a fault management and diagnosis system that
manages and analyzes faults in computer networks. (Tit.; *see also* 1: para.
[0002].)

4.   Buia discloses a network management station that is capable of
delivering and receiving information "by actively polling the network
entities or by receiving unsolicited information from the network entities."
(3: para. [0025].)

IV. ANALYSIS

Claim 1

Independent claim 1 recites, in relevant part, "analyz[ing] ... the unsolicited information ... according to a set of heuristics to provide a health measurement of the device."

As detailed in the Findings of Fact section above, Manghirmalani discloses a network management station that is capable of providing indications regarding the health of a computer network. (FF 1.) In particular, Manghirmalani discloses computing the health of a computer network by applying network specific data to a set of pre-defined formulas in order to produce a health score. (FF 2.) We find that Manghirmalani's disclosure teaches a network management station that applies formulas to network specific data in order to determine the health of a computer network.

Next, Buia discloses a system that manages and analyzes faults in computer networks. (FF 3.) In particular, Buia discloses a network management station that is capable of receiving unsolicited information from the network entities. (FF 4.) We find that Buia's disclosure teaches a network management station that receives unsolicited information from an entity or device in a network.

In summary, we find that an ordinarily skilled artisan would have readily appreciated that Manghirmalani's network management station is capable of utilizing the unsolicited information received from a device in a network, as taught by Buia, in its formulas, as part of its network specific data, to determine the health of such device. Therefore, we find that the combination of Manghirmalani and Buia teaches or fairly suggests the

disputed limitation. It follows that Appellant has not shown that the Examiner erred in concluding that the combination of Manghirmalani, Buia, and Baekelmans renders independent claim 1 unpatentable.

Claims 2 through 39

Appellant does not provide separate and distinct arguments for patentability with respect to independent claims 12, 18, 30, 33, and 34, and dependent claims 2 through 11, 13 through 17, 19 through 29, 31, 32, and 35 through 39. Therefore, we select independent claim 1 as representative of the cited claims. Consequently, Appellant has not shown error in the Examiner's rejection of independent claims 12, 18, 30, 33, and 34, and dependent claims 2 through 11, 13 through 17, 19 through 29, 31, 32, and 35 through 39, for the reasons set forth in our discussion of independent claim 1. *See* 37 C.F.R. § 41.37(c)(1)(vii).

V. CONCLUSION OF LAW

Appellant has not shown that the Examiner erred in rejecting claims 1 through 39 as being unpatentable under 35 U.S.C. § 103(a).

VI. DECISION

We affirm the Examiner's decision to reject claims 1 through 39.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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